Comments, Questions, and Proposals on the Draft of the New Capital Market Law

The Egypt Capital Markets Development Project

CHEMONICS INTERNATIONAL INC.

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EXECUTIVE SUMMARY

The Egypt Capital Markets Development (CMD) project was asked by the Capital Market Authority (CMA) to comment on the draft of the new Capital Market Law (CML). We have also been asked to present drafts of the Executive Regulations to implement the CML after it becomes law. This report presents the preliminary result to the CMA of our review of the CML.

The CML is a very good draft, obviously representing the product of much hard work and deep thinking about some very difficult issues. We are honored to be asked to comment on the draft. Our comments are designed to strengthen the work already done to assure the best possible new law for Egypt.

We recommend additional articles that will (1) authorize the establishment of self-regulatory organizations (SROs), the delegation of power by the CMA to them, and their regulation by the CMA (Articles 25, 33, and others); (2) change the bankruptcy law to protect the Settlement Guarantee Fund and the Investor Protection Fund; (3) authorize the CMA and SROs to administer civil discipline (Articles 20, 21, 22, 75, and others); (4) include general anti-fraud and full disclosure articles applicable to all situations and companies; (5) establish certain corporate governance standards for Reporting Companies; and (6) clarify the exemption of government securities and primary dealers from the CML.

Text of our recommendations on these matters follow in the body of this report.

We recommend changes to other articles to clarify or alter them.

Draft Presidential Decree, Article Four should refer to the "Capital Market Authority Board of Commissioners."

In Articles (2) and (19), the lists should be introduced by the words, "including without limitation the following," which will make it clear that the phrase is not interpreted as limiting the matters that may be addressed by the rules of the CMA. In Article (2), training should be deleted as an objective of the CMA and "Protecting investors" should be added. In Article (3), the full-time commissioners should have policy making functions, not become another layer of administration. In Article (7), we recommend changing clause 1 to add non-financial reports, and in clause 2, require licensing of persons as well as companies. In Article (12), we recommend that the persons appointed by the Justice Minister *investigate* as well as prosecute and that they have the full powers of prosecutors.

In Article (13), we recommend that Part Two apply to individuals as well as companies. In Article (19), we would add "any fraud or deceit in their activities" to cover improper behavior other than conflicts of interest. We recommend the deletion from Article (22) of clause e.

We recommend changing Article (26) to clarify interlisting of securities in Egypt and elsewhere. Article (28) should exempt gifts, inheritances and pledges, and other financing transactions. In Article (37), we recommend a change in the first paragraph and elimination of the third and fourth paragraphs because they are too damaging to the market.

In Article (41), we recommend that the CMA clearly be able to prescribe the form and content of reports. We believe that Article (42) is too restrictive, and that companies should be able to keep information confidential so long as they do not trade until the information is revealed. In Article (43) we recommend use of means other than the mail to inform shareholders.

We wonder if the time periods in Articles (46) and (49) are consistent. Article (48) needs clarification, but the place for that may be the Executive Regulations. In Article (51), we recommend abolishing the requirement of newspaper publication of summary financial statements and offering documents. We recommend adding an exemption for secondary sales on the Stock Exchange to Article (53).

Article (73) should be revised to allow the CMA to require additional information. Article (77) should require auditors to be chosen from the list established in Article (45). Article (79) should prevent certain conflicts of interest between banks and insurance companies and the funds they organize.

We recommend that Article (80) be changed to require proxy solicitation for all shareholder actions, not just election of directors. In Article (82), we recommend that bondholders' associations be able to chose any representative, not just a member, to represent them.

We recommend that Article (90) permit the Executive Regulations and rules to define all words used in them and the CML, not just the two mentioned. In Article (91) we would eliminate a conflict of interest by requiring the Chairman of the CMA to appoint to the Committee a person with no relationship to the CMA.

With respect to the articles on securitization, we recommend that the interests in the assets held by securitization firms be called certificates, not bonds, and that the rights of holders be more clearly identified. Most of our comments on securitization will be delivered after the Feast.

RECOMMENDED ADDITIONAL ARTICLES

Before we begin to comment upon specific articles of the CML, we note subjects that are not dealt with by the CML.

(1) We recommend that SROs be established and governed by more fully developed articles than Article (25). In particular, we recommend that the delegation of power by the CMA to SROs and the ability of the CMA to supervise SROs and require them to change their rules be made clear. This will affect Articles 25, 33, and others.

(2) The CML should be used as a vehicle to change the bankruptcy provisions of the Commercial Code to provide protection in bankruptcy proceedings for the Settlement Guarantee Fund and the Investor Protection Fund.

(3) The CML establishes crimes and monetary and prison penalties for violation of the CML. A similar pattern of civil discipline administered by the CMA and SROs should be authorized by the CML. This will affect Articles 20, 21, 22, 75, and others.

(4) We recommend that there be general anti-fraud and full disclosure articles to apply to all securities transactions and issuers. We would put these new articles in Part Ten (Closing Provisions) of the CML to show that they do not relate only to the classes of companies governed by the other parts of the CML.

(5) At the meeting of CMA national experts and the CMD on February 15, it was recommended that several provisions of Companies Law should be included in the CML. These are items relating to financing, governance, etc.

(6) The exemption of securities of the Government of Egypt and Central Bank of Egypt from the CML should be made clearer. Similarly, the activities of banks as primary dealers should be exempt from the CML and that exemption, too, should be made clearer.

We will draft these additions and forward them to the CMA soon after the feast.

We note the complete lack of any provisions relating to arbitration of disputes in the CML, in contrast to the current law. This change may be in response to the constitutional prohibition of requiring arbitration. We believe that in view of the prohibition, the CML should say nothing about arbitration, leaving it to CASE membership agreements, CASE listing agreements, ECMA membership agreements, broker/dealers' agreements with their customers, etc. The complete lack of references to arbitration in the CML will reinforce the voluntary aspect of the process.

RECOMMENDED CLARIFICATIONS AND CHANGES

Draft Presidential Decree

Article Four

We suggest replacing "Capital Market Authority" with "Capital Market Authority Board of Commissioners."

Article Four

The Minister of Economy and Foreign Trade shall, in consultation with the Capital Market Authority Board of Commissioners, issue the Executive Regulations of the attached Law within a period not exceeding six months from the date such Law comes into force.

The provisions, rules and systems prevailing as at the date the attached Law comes into force shall continue to prevail, without derogation to its provisions, until the Executive Regulations are issued.

Article (2)

We recommend that, instead of the phrase, "in particular in regard to," the phrase, "including without limitation the following," would make it clear that the phrase is not supposed to be interpreted as limiting the objectives and powers of the CMA, but is only a list of examples.

We also recommend that phrase 2] be deleted because it is not the function of a regulator to train people working in the field.

We also recommend that the phrase, "Protecting investors" should be added to the list of objectives. The American SEC has the objective of protecting investors and uses that as a basis for much of its rule-making authority.

Article (2)

The Authority shall be responsible for the application of the provisions of this Law and the decrees issued in implementation thereof, and may take whatever measures it deems necessary for the fulfillment of its objectives, ~~in particular in regard to~~ including without limitation the following:

1] Organizing the capital market

2] ~~Organizing and supervising training courses for those working in or connected to the capital market~~. Protecting investors

3] Supervising the compilation, publication and dissemination of information and data on the capital market.

4] Monitoring the capital market to ensure that trading in securities is effected in accordance with laws and regulations in force.

5] Monitoring the execution of this Law and the decrees issued in implementation thereof.

6] Expressing opinions on proposed laws and decrees related to the capital market.

Article 3

We recommend that the last sentence of the Article (3) be deleted. Only the Chairman and the Vice-Chairman should have administrative duties. The other full-time commissioners should not have administrative duties. They should be used for policy-making functions; not become another layer of administration.

Article (3)

The Authority shall be managed by a Board of Commissioners to be constituted by presidential decree. The decree shall designate a Chairman from among the members of the Board and a Vice-Chairman who shall replace the Chairman in case of his absence or incapacity.

The Board shall be made up of five full-time members and two part-time members having expertise in capital market affairs.

Each full-time Commissioner shall hold office for a term of five years subject to renewal for one further term. However, the membership of full-time members in the first Board of Commissioners shall end on the date specified in the decree of their appointment. As to the two part-time Commissioners, the term of their membership shall be three years subject to renewal for one further term. ~~The distribution of executive powers between the full-time Commissioners shall be by means of a resolution of the Chairman in consultation with the Board.~~

Article (7)

We recommend that clause 1] be revised to add "and non-financial," so that the sentence reads, "1] Specify the particulars that Reporting Companies are to include in the financial *and non-financial* reports filed . . ." This addition will assure that the CMA can adopt the IOSCO or other disclosure standards for non-financial disclosure.

We also recommend that clause 2] be revised to include licensing of persons, so that the sentence reads, "2] License the companies *and persons* working in the field of securities to pursue their activities." The ability to license and therefore discipline individuals is a key to effective enforcement of the securities laws. The CMA, and the SROs to which it delegates disciplinary functions, need to deal with all employees of a licensed company. The CMA can exempt those classes of employees for whom the protection of investors does not require registration.

We also recommend that clause 3] be revised to delete the phrase, "and rule on the complaints raised in connection therewith." This contradicts Article (91), which establishes a committee to deal with complaints about the stock exchanges.

Article (7)

The Authority shall strive to serve the general interest of the capital market and to encourage competition therein. To that end, the Board of Commissioners shall be entitled to:

1] Specify the particulars that Reporting Companies are held to include in the financial <u>and non-financial</u> reports filed with the Authority or the Stock Exchange pursuant to the provisions of this Law and the decrees issued in implementation thereof, the form in which such reports are to be presented and the accounting and auditing standards to be observed therein, all in accordance with the system laid down by the Executive Regulations.

2] License the companies and persons working in the field of securities to pursue their activities.

3] Follow up the activities of stock exchanges and the resolutions they issue ~~and rule on the complaints raised in connection therewith~~, all in accordance with the Executive Regulations.

4] Determine the fees to be collected by the Authority in consideration of the services it presents.

5] Approve the Authority's annual draft balance sheet.

6] Approve the financial and personnel regulations and the organizational structure of the Authority without being bound by governmental systems and without the need for approval by any other body.

Article (12)

We recommend that the article be revised to read:

"Authority employees whose names or positions are designated in a decree issued by the Justice Minister in agreement with the Competent Minister shall be invested with judicial powers *to investigate and* to prosecute crimes committed in violation of the provisions of this Law or of the decrees issued in implementation thereof. The employees shall have the same investigative and prosecutorial powers as investigators and prosecutors in the Ministry of Justice." We believe that the power to investigate is important—a proper investigation may show that no crime was committed and thus eliminate an unnecessary prosecution. The investigators and prosecutors should be able to exercise the same powers as other prosecutors—including interviewing witnesses and finding evidence wherever it may be. The limitations in the second sentence of the original draft are too narrow. Investigators and prosecutors should be able to pursue individuals as well as companies—for insider trading, illegal tender offers, and other violations of the law.

Our recommended changes remove the necessity of the second paragraph of Article (12), which should therefore be deleted.

Article (12)

~~Authority employees whose names or positions are designated in a decree issued by the Justice Minister in agreement with the Competent Minister shall be invested with judicial powers to prosecute crimes committed in violation of the provisions of this Law or of the decrees issued in implementation thereof. To that end, they shall have access to registers, books, documents and data on the premises of companies working in the field of securities and of Reporting Companies pursuant to the provisions thereof, at the stock exchanges or wherever they may be located.~~

~~The responsible officers in the establishments referred to in the preceding paragraph shall be held to furnish the said Authority employees with such data, abstracts and copies of documents as they may require.~~

Authority employees whose names or positions are designated in a decree issued by the Justice Minister in agreement with the Competent Minister shall be invested with judicial powers to investigate and to prosecute crimes committed in violation of the provisions of this Law or of the decrees issued in implementation thereof. The employees shall have the same

investigative and prosecutorial powers as investigators and prosecutors in the Ministry of Justice.

Article (13)

We recommend that the text be changed to read, "The provisions of this Part Two shall apply to all companies *and individuals* working . . ." We also recommend that "Securitising assets" and "client service activities" be added to the list. The first addition emphasizes that individuals working in the field of securities are amenable to discipline. We know that the law will deal with securitisation of assets, so we may as well add that to the list. Similarly there are already two client service companies licensed by the CMA, so that category, too, should be added to the list.

In the Arabic text, Item 2] on the list uses a different term than the dealers decree issued in January 2000. We recommend use of the same Arabic term as in the dealers decree (decree 43/2000), so that there will be no confusion about this category of companies.

Article (13)

The provisions of this Part Two shall apply to all companies and individuals working in the field of securities, by which is meant companies acting in one or more of the following capacities or carrying out one or more of the following activities:

1] Broker

2] Dealer in securities

3] Advisor on securities

4] Soliciting and underwriting subscriptions to securities

5] Forming and managing investment funds

6] Forming and managing securities portfolios

7] Credit rating

8] Analyzing and publishing information on securities

9] Securitizing assets

10] Client service activities

~~9]~~ 11] Holding Company activities

~~10]~~ 12] Venture capital activities

~~11]~~ 13] Other activities as defined in a decree issued by the Competent Minister on the proposal of the Board of Commissioners.

Companies engaged in the business of securities brokers or dealers shall be referred to as "Securities Intermediaries" and may not offer advice in respect of securities without a special license for this purpose.

The Executive Regulations shall indicate the businesses falling within the scope of each of the activities referred to in this article.

Article (19)

We recommend that the phrase "in regard to the following" be changed to "including without limitation the following," which will make it clear that the phrase is not interpreted as limiting the matters that may be addressed by the rules of the CMA.

We also recommend that the phrase, "_] Any fraud or deceit in their activities" be added to cover improper behavior other than conflicts of interest.

Article (19)

Companies working in the field of securities are held to comply with the rules issued by the Authority ~~in regard to the following~~ including without limitation the following:

1] Disclosure to customers

2] Avoiding conflicts of interest

3] Segregation of their accounts, funds and financial administration from those of their customers

4] Transfer of customer files from one company to another

5] Other records and documents that must be maintained

6] Insurance policies

7] Reports of complete and partial inspections and annual and periodic financial statements that must be submitted to the Authority.

8] Any fraud or deceit in their activities.

Article (20)

Article (20) raises issues involving the delegation of power to SROs. We intend to comment on it when we send you our recommendations for a part dealing with SROs.

Article (21)

Article (21) raises the issue of civil disciplinary measures that are less drastic than suspension of a company. We recommend that the Authority be granted the power, which may be delegated to SROs, to impose monetary payments (not fines, which are criminal penalties) for violations of the law and regulations. We believe that if Egyptian law permits a civil suspension of a company's activities (which destroys a company's business and costs it lost revenue), it permits a civil monetary payment in lieu of the suspension (which would not destroy the business or lead to loss of revenue, as opposed to loss of profits). The power to impose the greater penalty includes the power to impose the lesser, if authorized by law. This, too, will be covered in our report to be delivered after the Feast.

Article (22)

We recommend that Article (22) also contain a provision authorizing monetary payments for the actions described in the article. We will provide the text of a change after the Feast.

We believe that clause e], authorizing the CMA to dissolve the board of directors and appoint a Commissioner to manage the company is not appropriate and we recommend that it be deleted. The Commissioners have regulatory functions; they should not be compromised and subject to a conflict of interest by managing a company, even temporarily. The CMA should only require the shareholders to elect a new board of directors.

Article (22)

The Board of Commissioners may, if a dangerous situation arises in a company working in the field of securities which threatens the stability of the capital of a company, the interests of stockholders in such company or the interests of those dealing with it, take such of the following measures as it deems appropriate:

a] Serve notice on the company

b] Bar the company from carrying out all or some of the activities it is licensed to perform

c] Require the Chairman of the company's board of directors to call a board meeting to look into the violations attributed to the company and take measures to remove such violations. In such case, one or more representatives of the Authority shall attend the board meeting.

d] Appoint one of the Commissioners to supervise meetings of the company's board of directors for the period determined by the Board of Commissioners. The Commissioner so appointed shall be entitled to take part in the deliberations of the board and to record his opinion on any resolutions it issues.

~~e] Dissolve the board of directors and appoint a Commissioner to manage the company temporarily until a new board of directors is appointed in accordance with the statutorily prescribed procedures.~~

~~f]~~ e] Require the offending company to raise the value of the insurance deposited by it.

Article 24

We recommend that the phrase "is detrimental to its clients" be changed to "is *intentionally* detrimental to its clients" so that only deliberate actions are covered, not changes in circumstances that make the practice detrimental in hindsight.

Article (24)

No investment advisor or any affiliate thereof shall engage in any practice that is <u>intentionally</u> detrimental to its clients or that involves any fraud or deceit as defined in the Executive Regulations.

The companies referred to in the preceding paragraph shall not impose fees or charges for their services in violation of the rules issued by the Authority.

Article (25)

This article raises the issue of additional provisions to permit the CMA to delegate powers to the SROs, to regulate them, to approve membership agreements, to require them to amend their rules or adopt new rules, and to hear appeals from the decisions of the SROs. We will provide the text of a new part dealing with SRO issues after the Feast.

Article (26)

The last sentence of Article (26) is anti-competitive and should be deleted. If there were more than one exchange in Egypt, securities should be permitted to be listed on both, so that there would be competition between them. However, the issue is irrelevant so long as there is only one exchange.

We assume that this article relates to exchanges in Egypt and that Article (26) does not prohibit listings on foreign exchanges of securities listed in Egypt, as well as a listing in Egypt of securities listed in other countries (interlisting). The CMA and CASE and regulators and exchanges in other Arab countries have discussed interlisting on CASE and other Arab exchanges. Therefore, to make the text completely clear, we recommend that the words, "in Egypt" should be added as the last words in the last sentence of Article 26 if that sentence is retained.

Article (26)

Securities shall be listed in the schedules of the Stock Exchange at the request of the issuing entity. The listing and delisting of a security shall be effected pursuant to a resolution of the Board of Directors of the Stock Exchange in accordance with the rules laid down by the Board after their approval by the Board of Commissioners. ~~The same security may not be listed on more than one Stock Exchange~~ in Egypt.

Article (28)

We recommend that Article (28) be limited to sales and purchases for money. There is no public purpose served by requiring that gifts, pledges, other security arrangements, securities lending and borrowing, and inheritances be handled by brokers.

Article (28)

Transactions on securities listed in the Stock Exchange may only be carried out by one of the companies licensed to engage in such transactions, on pain of nullity. The companies in question shall guarantee the soundness of the transactions carried out by them. The Executive Regulations shall specify the transactions that licensed companies are prohibited from carrying out. This Article shall not apply to gifts, inheritances, pledges, financing transactions and any other transactions specified in the Executive Regulations.

Article (33)

Does the power of the Competent Minister to approve rules of a stock exchange include the power under Egyptian law to require amendments or additions to the rules? We recommend that this power be made clear. A sentence should be added reading, "The Competent Minister may require a Stock Exchange to amend its rules." We will save this comment and include it when we propose a part dealing with SROs.

Article (37)

As written, the first article imposes no legal standard governing the discretion of the two chairmen. We generally concur in the recommendation of the Egyptian Capital Market Association for a revision of the text of this paragraph.

We also recommend that the third paragraph, dealing with cancellation of a trade after settlement, be revised to read,

> "In no case may cancellation of a trade be effected after settlement."

With respect to a cancellation because of a crime, because a crime must have been committed, it will be months, if not years, before a criminal decision and sentence are made by a court. That is far too long to go back and cancel a trade. Further, the third paragraph does not state who may do the cancellation. Presumably it is the court because the only permitted reason is the commission of a crime (not the preliminary step of an indictment), and no one will know if a crime has actually been committed until after a criminal trial has taken place. Further, any post-settlement cancellation, for whatever reason, damages the stability of the market. The proper remedy for the harm caused by an improper trade is damages.

When the third paragraph is removed, the fourth paragraph becomes unnecessary and should also be removed.

Article (37)

~~The Chairman of the Authority or the Chairman of the Stock Exchange may issue a resolution suspending trading offers and applications or canceling trading transactions prior to settlement if he suspects that such trade involves any irregularity or violation of laws or decrees issued in implementation thereof, or if cancellation is necessary for the realization of public interest or the protection of the interests of investors.~~

The Chairman of the Authority or the Chairman of the Stack Exchange may issue a resolution suspending trading offers and applications or canceling trading transactions prior to settlement, for one party or more, if such trade involves any irregularity or violation or any trading rules. In case of a cancellation of a trading transaction for an offender, it should be settled for the interest of the other party as well as requiring the offender to bear all settlement costs, including any price differences.

A resolution of cancellation shall not be issued after the trading session except by the Chairman of the Authority.

~~In all cases, no cancellation of a trade may be effected after settlement except by reason of the commission of one of the crimes listed in Part Fourteen of this Law.~~ In no case may cancellation of a trade be effected after settlement.

~~Cancellation of a trading transaction shall restore matters to the state they were in prior to the transaction, including the reimbursement of the value of the securities sold.~~

Article (40)

We will propose text to ensure that government entities are never considered to be reporting companies. Further, we assume that the Executive Regulations will define "Reporting Companies" to be the issuers of any interest that has the characteristics of a security, so that it could cover issuers that are not joint stock companies.

Article (41)

So that there may be no doubt that the CMA may prescribe the contents as well as the form of reports, we recommend the following change in the text:

"The reports referred to in the preceding article shall be prepared in the manner *prescribed for form and content* in a resolution . . ."

Article (41)

The reports referred to in the preceding article shall be prepared in the manner prescribed for form and content in a resolution to be issued by the Authority, provided each such report shall include a description of the Reporting Company, its activity, its financial statements, information on the securities it offered, on its managers and their transactions with the Reporting Company, its affiliates and those with which it does business and the transactions of the said Company with its major shareholders.

The report shall contain such further information as may be necessary to ensure that it is not misleading in the light of the circumstances under which it is made.

Article (42)

We recommend the elimination of Article 42 as an absolute requirement to disclose new information. It requires a Reporting Company to disclose any event that is not generally known and would likely have a significant influence on the market price of its securities. This is harmful because it would require premature disclosure of merger or acquisition discussions (long before an agreement had been reached), disclosure of research or new products before a patent had been applied for or before the usefulness of the new product is known, etc. Instead of requiring disclosure of these events, which could harm the company, the article should prohibit any trading by the company, its directors, officers and outside advisors (lawyers, accountants, investment bankers, etc.) until disclosure is made. This change prevents insider trading, but does not require premature disclosure that harms the interests of the company and its security holders. We will provide text after the Feast.

Article (43)

We recommend that the last sentence in the first paragraph be changed to read:

"A Reporting Company shall provide copies of its reports to all holders of its securities."

This leaves no doubt about the obligations of a Reporting Company; and permits email, and other non-postal forms of communication.

It seems unlikely to us that any underwriter of securities would pay for reports that it uses to sell the securities. We believe that Reporting Companies should bear the cost of disseminating information about themselves to prospective purchasers of their securities. Therefore the phrase "and upon reimbursement of the expenses it incurred in preparing such copies" should be deleted from the article.

Article (43)

The Authority and the Stock Exchange shall provide the public with access to the reports referred to in article (40) of this Law by any means, including electronic means, as well as to the press releases notified to them by the Reporting Company. ~~The Authority may require a Reporting Company to mail copies or summaries of its reports or press releases to all holders of its securities.~~ A Reporting Company shall provide copies of its reports to all holders of its securities.

The Reporting Company shall be held to furnish its affiliate or sister companies and the companies underwriting subscriptions to its securities with an adequate number of copies of the above-mentioned reports at their request ~~and upon reimbursement of the expenses it incurred in preparing such copies~~, so that they may use them in offering the securities for sale pursuant to the provisions of Part Five of this Law.

Article (46)

This article deals with a notification to the CMA that a company intends to issue securities. The CMA has two weeks to respond. Compare this time period with the thirty days established in Article (49) that the CMA has to review a Prospectus or Offering Circular. Are these provisions inconsistent? How can the CMA approve the issue of the securities if the Prospectus or Offering Circular has not been approved? Or does Article (46) deal only with the concept of issuing securities? If so, why is the CMA involved at all?

We recommend that the phrase in the first paragraph "of being notified" be replaced by "after receiving all required information." This clarifies that the time for a decision only begins when a complete notice has been filed.

We will propose text to ensure that government entities are never considered to be Reporting Companies. Further, we assume that the Executive Regulations will define "companies" to be the issuers of any interest that has the characteristics of a security, so that it could cover issuers that are not joint-stock companies.

Article (46)

Any company wishing to issue securities is held to so notify the Authority. If the Authority does not respond with a reasoned objection in writing within two weeks ~~of being notified~~ <u>after receiving all required information,</u> the company may proceed with issuing securities.

The Executive Regulations shall determine the particulars to be included in the notice and the documents to be attached thereto.

Article (48)

Presumably the Executive Regulations will permit the General Meeting to approve a range of yields so the company and the underwriter may choose one that satisfies the requirements of the market on the day of the offering. Does this need to be made clear in Article (48), or is it sufficient to leave that to the Executive Regulations?

We also recommend that the phrase in the second paragraph "from the date of the application" be changed to "from the date of an application containing all required information." This clarifies that the time for a decision only begins when a complete notice has been filed.

Article (48)

Bonds, debentures and other similar financial instruments shall be issued with the approval of the company's General Meeting and in accordance with the rules and procedures laid down in the Executive Regulations. The General Meeting's approval must include the returns yielded by the bond, debenture or instrument and the basis on which they are calculated without being bound by the limits prescribed in any other law.

A license must be obtained from the Authority in the event bonds, debentures and other similar financial instruments are offered for sale. If the Authority does not refuse to grant the license within two weeks from the date of ~~the application~~ an application containing all required information, the interested party shall be entitled to proceed with the offering. The Authority's refusal must be in writing and reasoned.

Article (51)

We have several problems with this article. Presumably the difference between a public offering and a private offering will be the degree of publicity permitted for the offering. (The CML leaves it to the Executive Regulations to define these two terms.) How can a private placement be nonpublic if the Private Offering Circular must be published or an advertisement about it published in two newspapers?

Article (51) retains the concept of publication in newspapers of summary financial statements and a summary Public Offering Prospectus (and summary Private Offering Circular). We recommend that newspaper publication be abolished. Everyone in the market with whom we have discussed this issue tells us that it is so expensive that few companies actually do it. In addition, because the published material is in summary form, it fails to inform security holders and potential investors properly and misleads them into thinking that the information given to them in the newspaper is an adequate basis for an investment decision. We recommend that newspaper publication be made optional and that the publication be limited to a description of the document that the company has made available and how to obtain it. In view of our two comments on Article (51), we recommend, therefore, that Article (51) be revised to read:

Article (51)

~~Any person wishing to offer securities for sale pursuant to the provisions of this Part Five shall publish a summary of the financial reports and the Public Offering Prospectus or Circular in two mass circulation morning newspapers, at least one of which shall be in the Arabic language, or advertise same in any other manner as prescribed by the Authority, and shall furnish prospective buyers with copies of such documents.~~

Any person wishing to offer securities for sale in a public offering pursuant to the provisions of this Part Five shall publish in any manner prescribed by the Authority an advertisement stating that the offering is taking place and stating how the Public Offering Prospectus may be obtained, and shall furnish prospective buyers with free copies of the Prospectus.

Article (53)

It is not entirely clear if Part Five applies solely to offerings by the issuer. Secondary offerings are not mentioned except in the second paragraph of Article (49), but the Competent Minister, by rule can require a Prospectus or Circular for other secondary offerings. In any event, we recommend that Article (53) exempt secondary sales on the Stock Exchange. Therefore, we recommend adding a clause:

"_] Secondary sales on a stock exchange."

Article (53)

The provisions of this Part Five shall not apply to the following:

1] Offerings of exempt securities

2] The sale of securities by a liquidator.

3] The sale of shares owned by Public Business Sector holding companies in subsidiary companies to the employees in such subsidiary companies, pursuant to the rules and procedures laid down in a decree to be issued by the Minister of the Public Business Sector.

4] The sale of shares owned by the State in the equity capital of companies to the employees in such companies, pursuant to the rules and procedures laid down in a decree to be issued by the Competent Minister.

5] Secondary sales on a stock exchange.

6] Cases to be determined by a decree of the Competent Minister in consultation with the Authority as consistent with the public interest or the interests of investors.

Article (55)

This article states the notification procedures that must be followed for a Reporting Company to purchase its securities. The capital prerequisites of a purchase should be addressed in the companies law, including the proposed Unified Companies Law. The current companies law, No.159/1981, apparently contains no financial requirements that must be met before a company may purchase its shares. This permits potentially abusive behavior of a company to its creditors. After the Feast we will provide text that addresses this and other issues of corporate governance.

Article (61)

We recommend that a new sentence be added reading,

"The price may be paid in cash, any securities of the tender offeror or any other issuer, or a combination of cash and securities."

This will make clear what is now merely understood.

Article (61)

A tender offer must be directed at all the holders of shares subject of the offer and must offer them the same conditions, including the price or any increase in price during the course of the tender offer. The price may be paid in cash, any securities of the tender offeror or any other issuer, or a combination of cash and securities.

Article (73)

We recommend that this Article be amended by adding:

"5. Such other information as the Authority may require."

This addition will make it clear that the Authority has the power to require additional disclosure from investment funds.

Article (73)

A prospectus for subscription to investment certificates must include the following information:

1. Investment policies.

2. Method of distributing annual dividends and manner of dealing with capital profits.

3. Name of entity that will manage the activities of the Fund and a comprehensive summary of its previous experience.

4. Method of periodic evaluation of Fund assets and procedures for the redemption of the value of investment certificates.

5. Such other information as the Authority may require.

Article (75)

A significant financial payment should be imposed as a civil response to wrong-doing by fund managers. We will propose this in our text to be provided after the Feast.

Article (76)

We recommend that Article 76 be revised to read,

"Investment funds shall be exempt from all income, capital gains, stamp and other taxes."

They should enjoy the same privileges as listed companies and securitization firms.

Article (76)

~~The profits of Investment Funds established pursuant to the provisions of this Law shall be exempt from the tax on income.~~ Investment funds shall be exempt from all income, capital gains, stamp and other taxes.

Article (77)

We recommend that auditors of investment funds be chosen from a table prepared by the Authority. This is similar to Article 45.

Article (77)

The accounts of the Investment Fund shall be audited by one or more auditors whose names are listed in tables prepared by the Authority for this purpose. An auditor may not audit the accounts of more than two Funds at the same time, in accordance with the rules laid down in a resolution to be issued by the Board of Commissioners.

Article (79)

Banks and insurance companies engaging in the activity of investment funds should be subject to regulations preventing certain conflicts of interest. Investment funds organized or managed by banks or insurance companies should not be permitted to invest in companies that are debtors to those banks or insurance companies. This will prevent the banks or insurance companies from organizing funds that buy securities from companies that use the proceeds to repay loans from the banks or insurance companies. Other conflicts may exist. Should these prohibited transactions be mentioned in the CML or is it sufficient to put the prohibitions in the Executive Regulations?

Article (80)

We recommend that Article 80 be expanded to require all actions of shareholders, not just election of directors, be subject to the rules of the Authority. This would cover changes in capital, mergers, etc. Therefore, we recommend changing the text to read:

> "The election of directors on the boards of Reporting Companies *and all other actions by their shareholders* shall be. . ."

Article (80)

> The election of directors on the boards of Reporting Companies and all other actions by their shareholders shall be in accordance with the rules and procedures laid down by the Executive Regulations in respect of the observance of proportions of distribution of the Reporting Company among shareholders.

Article (82)

We recommend that the words "drawn from its members" be deleted. A bond holders association should be able to appoint anyone, not just a member, to represent its interests.

Article (82)

> The holders of bonds, debentures and other similar securities issued by a Reporting Company may form an association among themselves for the purpose of representing their common interests. The association shall have one or more legal representatives ~~drawn from its members~~ whose selection and removal shall be elected in compliance with the provisions of the Executive Regulations.

Article (89)

There should be no cancellation of trades after settlement. Therefore Article (89) should be changed to read,

Article (89)

> ~~Any person who suffers injury by reason of a violation of the provisions of this Law or the decrees issued in implementation thereof may seek from the competent court, instead of damages, an order to cancel the disposition that caused the injury and to restore matters to their original state whenever the matter relates to securities or to the disclosure of false information.~~
>
> Any person who suffers injury by reason of a violation of the provisions of this Law or the decrees issued in implementation thereof may seek only money damages.

Article (90)

As drafted, this Article requires the Executive Regulations to define two terms: "affiliate" and "effective control." We recommend that other words need to be defined as well and that Article 90 be revised to read,

Article (90)

> ~~The Executive Regulations shall define what is meant by "affiliate" and "effective control" in the application of the provisions of this Law~~.

The Executive Regulations and rules may define what is meant by any word used in this Law, the Executive Regulations or any rule thereunder.

Article (91)

We recommend that the occupant of a senior managerial post in the Authority not be chosen to be on the committee that reviews complaints against an action of the Authority. This is a clear conflict of interest. The Chairman of the Authority should be required to appoint someone who has no current or past relationship with the Authority.

Article (91)

A committee shall be formed by decree of the Competent Minister under the chairmanship of one of the vice-presidents of the Council of State and the membership of two counselors of the Council of State chosen by the Council, ~~the occupant of a senior managerial post in the Authority~~ a person who has no current or prior commissioner or employment relationship with the Authority chosen by the President of the Authority and a member with special expertise chosen by the Competent Minister. The Committee shall look into complaints presented by aggrieved persons against decisions issued by the Minister, the Authority or the Stock Exchange pursuant to the provisions of this Law or the decrees issued in implementation thereof.

The prescription period for submission of a complaint against a decision is thirty days from the date the decision is notified or comes to the knowledge of the aggrieved party. The Executive Regulations shall lay down the procedures for reviewing and ruling on the complaint, and the committee's decision shall be conclusive and enforceable. No court case instituted to procure the cancellation of any such decision shall be considered before a complaint has been submitted.

The Executive Regulations shall lay down the rules organizing the fees and expenses of the Complaints Committee.

Article (93) and (96)

It appears that the cross references in these articles are confused.

Securitization Articles 70 – 76

Article (70)

Article (70) refers to bonds to be issued by securitization firms. Experience in other markets shows that several types of interest may be issued by the securitization firms in the same fund of assets. For example, some investors may purchase the right to receive the interest payments from the assets while other investors prefer to purchase the right to receive the principal payments of the same assets. Therefore, requiring securitization firms to issue only bonds unnecessarily limits their ability to introduce new financial instruments to the Egyptian capital markets and the ability of investors to choose the financial instruments that best suit their needs. This change in the type of security issued by securitization firms is also made in Articles 71, 72 and 73.

We suggest that Article (70) be changed to read:

Pursuant to a decree issued by the Competent Minister, a company licensed to transact securitization activities pursuant to the provisions of this law shall be allowed to form and manage portfolios of contractual and non-contractual obligations.

Article (71)

We recommend the following text in view of our prior comments about bonds:

> A securitization firm may issue certificates of interest or participation in a portfolio of assets whose underwriting proceeds shall be used to form the portfolio by purchasing them. The actual value of these certificates shall be paid in full. Revenues of firms shall be used solely for expenses of holding the portfolio, including the fees of the securitization firm, and for distributions to certificate holders.

Article (72)

We recommend the following text in view of our prior comments about bonds:

> A securitization firm shall make payments upon certificates from the revenues earned by the portfolios held by the firm, and in this regard the firm shall be acting on behalf of certificate holders. However, these certificates and the portfolios held by the firm shall not be part of the firm's assets that are available to creditors of the firm.

Article (73)

We recommend the following text in view of our prior comments about bonds:

> The portfolios therein shall be transferred to certificate holders upon an agreement between the transferor and the securitization firm according to the form based on a CMA decree.

We expect to have other comments on the securitization articles and will provide them to you after the Feast.